

MINUTES
POLICY ADVISORY OPINION COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
1917 IH-35 SOUTH, BOARD ROOM, AUSTIN, TEXAS
November 17, 2011—8:30 AM

CALL TO ORDER. Committee Chair Lamberto “Bobby” Balli, P.E., called the Policy Advisory Opinion Committee meeting to order at 8:31 a.m. on November 17, 2011, at the Texas Board of Professional Engineers (TBPE), 1917 Interstate 35 South, Austin, Texas. (**Note: All votes are unanimous unless otherwise indicated.**)

1. Roll call and welcome visitors.

Lamberto “Bobby” Balli, P.E.	Chair
Daniel Wong, Ph.D., P.E.	Member
Govind Nadkarni, P.E.	Member
Edward Summers, Ph.D.	Member

A quorum was present. Veena Mohan, Assistant Attorney General, was present to provide legal counsel. Mr. Edmundo Gonzalez, Jr., P.E., Emeritus Board Member was present.

The following staff members were present:

Lance Kinney, P.E.	Executive Director
Priscilla Pipho, MPA	Deputy Executive Director
C.W. Clark, P.E.	Director of Compliance & Enforcement
Dewey Helmcamp, III, JD	Staff Attorney
Charles Pennington, P.E.	Engineer Specialist
Dorothy Gonzales	Executive Assistant

Visitors. Al Kosik, P.E., Texas Department of Transportation (TxDOT); Terry Velderbag, Texas Society of Professional Engineers (TSPE); Doug Bell, P.E, TSPE; Peyton McKnight, American Council of Engineering Companies – Texas (ACEC-Texas); Carol Hemphill; Ron Hemphill.

- 2. Public comment.** Ms. Hemphill addressed the Committee and asked about the Policy Advisory Opinion Committee process and actions by the Board. She also asked about the role of the enforcement division. She opined that the Policy Advisory Opinion (PAO) process was not being followed. Mr. Balli explained that there was a formal information request and complaint process. However, he will ask Mr. Clark to review the PAO policy since the Committee will be addressing a PAO.

DISCUSS AND POSSIBLY ACT ON THE FOLLOWING ITEMS (AGENDA ITEMS 3-4):

- 3. EAOR #31 – Designated Engineering Representative (DER) Consideration of whether a DER is required to be licensed in Texas.**

Mr. Clark reviewed the policy advisory opinion process to the Committee members and mentioned that it is also available on the agency website.

Mr. Balli asked Mr. Pennington to review the Policy Advisory Opinion Request submitted, discuss staff opinion, then the Committee will discuss further and take action if needed.

Mr. Pennington reported that a request was submitted by Mr. John Seamans, P.E., regarding the requirement of a DER be a licensed engineer. Mr. Pennington reviewed what a DER does in regards to the Federal Aviation Agency (FAA). The FAA is charged with the regulation of civilian aircraft. They

regulate all aspects of aircraft design, manufacturing, traffic control, pilot training, mechanic training, and also the operation of aviation related businesses as mentioned in Federal Aviation Regulations (FAR). The FAA does not have enough engineers on staff to oversee the engineering activities so they have a designee program to do this type of work. To become a DER, there is an application process. A DER must have an accredited engineering degree and four (4) years aviation experience or eight (8) years in aviation or aeronautics engineering experience; three (3) references, and must attend a mandatory orientation by the FAA. The Committee was provided with an example of an aircraft type certificate. Mr. Pennington reviewed with the Committee the work done by a DER on this certificate. Mr. Pennington opined that a DER is regulated by the FAA, and therefore may not have to be regulated by the Board. He added that the activities of a DER are supervised by the federal government. He mentioned that there are 130 DERs active in Texas, and it appears that 19 are licensed as professional engineers in Texas. He stated that queries were sent to other licensing boards asking how they handle DERs in relation to licensure. Nine of the responding boards do not require a DER to be licensed in their state; three responded that they would address this on a case-by-case basis. Some of the other states have specific language that address the DER exemption. Mr. Pennington opined that the situation does not completely match with the Act section 1001.101 which mentions the exemption of federal employees as a basis to exempt DERs; nor the manufacturer exemption which exempts private companies from having licensed engineers, because the DER is acting as a consultant. In their DER activity, all their work is monitored and approved by the FAA. It is the opinion of the staff that a DER may be exempted from the licensing requirements of the Act as long as their services are strictly being performed for the FAA. If they are acting as a general aviation consultant to the public of Texas, then the Board may require the DER to be licensed.

Mr. Nadkarni asked what the difference is between a DER and a consultant providing services for Texas. Mr. Nadkarni recommends a legal opinion regarding this request. He believes that if the engineering service is not being done on federal grounds then the engineer should be licensed.

After further discussion, the Committee appointed Mr. Govind Nadkarni as the board liaison to work with staff on this issue. The Committee directed staff to provide a formal opinion and comments, and work with the board liaison on providing additional information to be presented at the next scheduled PAOC meeting.

It was MOVED/SECONDED (Nadkarni/Wong) to table this opinion until the next scheduled PAOC meeting, and for staff to provide additional information. A vote was taken and the MOTION PASSED.

4. Issues for consideration and schedule next meeting.

EAOR #31 – Designated Engineering Representative (DER) Consideration of whether a DER is required to be licensed in Texas.

ADJOURN.

It was MOVED/SECONDED (Nadkarni/Wong) to adjourn the meeting at 9:05 am. A vote was taken, and the MOTION PASSED.

Date Committee approved the minutes as submitted:	February 15, 2012
Date Board accepted the minutes:	February 15, 2012